

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DWAYNE EICHLER,

Plaintiff, No. CIV S-04-1108 GEB JFM P

vs.

CDC OFFICER SHERBIN, et al.,

Defendants. ORDER

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Plaintiff is a state prisoner proceeding in propria persona and in forma pauperis with a civil rights action pursuant to 42 U.S.C. § 1983. This matter is proceeding on plaintiff's Eighth Amendment claim against defendants Sherbin and Lebeck arising from an incident on June 1, 2003, when plaintiff was slashed by another inmate with an inmate-manufactured weapon. See Findings and Recommendations, filed September 29, 2006, at 5. Plaintiff claims that on that day defendants Sherbin and Lebeck acted with deliberate indifference to plaintiff's safety, specifically, by "leaving him unrestrained and unescorted" while he was collecting food trays as an inmate porter while the prison "facility was on lockdown and after numerous inmate weapons had been confiscated." Id. at 4, 11.

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1 This matter has been remanded from the United States Court of Appeals for the
2 Ninth Circuit for further consideration of whether the constitutional right at issue in the foregoing
3 claim was clearly established for purposes of qualified immunity. Good cause appearing, the
4 parties will be granted a period of thirty days to file and serve supplemental briefing on the
5 question of whether the constitutional right at issue in these proceedings was clearly established
6 for purposes of qualified immunity.

7 On August 4, 2008, plaintiff filed a request to file a second amended complaint.
8 Defendants oppose the request on the ground that it appears the request should have been filed in
9 another action filed by plaintiff in this court, No. 2:06-cv-2894 JAM CMK (PC). Review of
10 plaintiff's request and the record in the latter action confirm defendants' position. Good cause
11 appearing, the Clerk of the Court will be directed to transfer plaintiff's August 4, 2008 request
12 for leave to file a second amended complaint to Case No. 2:06-cv-2894 JAM CMK (PC).

13 In accordance with the above, IT IS HEREBY ORDERED that:

14 1. Within thirty days from the date of this order the parties shall file and serve
15 supplemental briefing on the question of whether the constitutional right at issue in these
16 proceedings was clearly established for purposes of qualified immunity; and

17 2. The Clerk of the Court is directed to transfer plaintiff's August 4, 2008 request
18 to file a second amended complaint to Case No. 2:06-cv-2894 JAM CMK (PC).

19 DATED: August 19, 2008.

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21 John F. Marshall
22 UNITED STATES MAGISTRATE JUDGE

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